

## AMENDMENTS IN THE CLAIMS

Amendments to the claims are included in a separate paper. It is believed that no new matter is presented in the amended claims, as the terms used in the Claims As Amended July 5 2005 may be found throughout the originally filed disclosure. In particular, the language of New Claim 16 may be found on page 12, in the detailed paragraph beginning at line 5.

## RESPONSE

### 10 Claim Rejections Under 35 USC Section 112, First Paragraph of the First Office Action

The Examiner presently rejects claims 6, 7, and 11, for use of several terms: “pin” in claims 6 and 7, and “third position”, “fourth position”, and so on in claim 11. The term “pin” have been removed in order to speed prosecution. In claim 11, the numbering of positions is 15 dropped in favor of the terms “use position” and “folded position.” The Examiner will note that the terms “use position” (also “position of use”) and “folded position” may be found throughout the application as originally filed, as well as in reference to the diagrams. For example, Figures 2, 3 and 4 are referred to as follows: “Fig. 2 is a large scale side view of the preferred embodiment of the invention in the position of use. Fig. 3 is a small scale side view of the 20 invention showing the angles through which the structural members move between the position of use and the folded position. Fig. 4 is a front view of the invention in the folded position.”

It is believed that this modest change in terminology makes the claims extremely

comprehensible, and that the claims 6, 7 and 11 are now in condition for immediate allowance, and such action is earnestly requested.

Claim Rejections Under 35 USC Section 112, Second Paragraph of the First Office Action

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The Examiner presently rejects claims 11, 14 and 15 for use of the terms “the two base”, “the member”, and limitations in regard to the trailer.

The word “two” is a typographical error and is removed from claim 11 of the Claims As Amended July 2005.

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The language of Claim 14 has been considerably simplified to remove the Markush group, all references to “the member” and related language. The simplified language simply claims a weight saving hole through the ladder.

The language of Claim 15 has been considerably simplified to remove language relating to the size of the boat and height of the trailer rail.

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It is believed that these simplifications render these claims definite, broader and allowable, and thus that the claims 11, 14 and 15 are now in condition for immediate allowance, and such action is earnestly requested.

Claims Rejections Under 35 USC Section 102, Third Paragraph of the First Office Action

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The Examiner presently rejects certain claims as lacking “novelty” over several items of prior art: US Patent No. 377,219, US Patent No. 781,898, US Patent No. 1,258,487 and US

Patent No. 5,042,614. These items have diverse structures and features in various arrangements, and the applicant believes that the Examiner has cited them because they are all ladders having some form or another of hook on them.

However, Claim 1 as originally filed does not claim merely a ladder with a hook. The hook has a very specific nature stated in Claim 1, shown in the diagrams, and an extended discussion in the disclosure, at page 12:

Preferred embodiment 20 has hook 22 having hook barb 22a, hook extension 22b and hook shaft 22c. Hook 22 is dimensioned and configured to physically engage to trailer rail 6 by clipping thereto. "Clipping" in this application does not necessarily require any deformation of the hook and a "clicking" into place, on the contrary, fitting snugly is sufficient. If clearances between the various sub-components of the hook and the rail are narrow enough, a secure attachment is created without any physical change in shape by either item. Thus, it is advantageous in the preferred embodiment if the hook extension 22b has an interior length approximately equal to the width of the trailer rail 6, while hook barb 22a and hook shaft 22c may advantageously be of a length sufficient to provide strong anchor in torsion: that is, torque applied is absorbed by a relatively long member which may even be as long or longer than the depth of the trailer rail 6. Shape is also an element of the dimensioning and configuration of hook 22 to the trailer rail 6, as the shape should match the shape of several surfaces (not necessarily all surfaces) of the trailer rail 6.

One advantage of the present invention is that simply by placing the ladder's hook

5 onto the rail, a secure hold may be obtained without clamping or bolting as shown in prior art. Another advantage is that the ladder of the invention may be “slid” along the rail without removing or un-clipping it, so that a user may easily work their way along the length of the boat trailer, for example, while cleaning the upper surface of the boat, without the need for continually removing the ladder to reposition it.

10 This entire passage comprises an extended discussion of the nature of the hook, in particular the fact that it is “a hook dimensioned and configured to physically engage with a rail of a boat trailer when clipped thereto”. Clipped is then defined, the lengths of the various parts of the hook are defined in terms of the width and depth of the trailer rail, the shape is discussed and so on.

Amended Claim 1 reads, in part:

15 1. (Currently Amended) A boat cleaning ladder for use on a boat trailer rail having a boat trailer rail width and a boat trailer rail depth, the boat cleaning ladder comprising:

*a hook dimensioned and configured to physically engage with such boat trailer rail when clipped thereto...*

20 Thus, the application very clearly spells out the nature of the hook.

The references cited to date do not teach this limitation, as they do not have a hook of the proper type, nor do they have hooks which could serve this function. The ‘219 reference teaches

a hook at the top of the ladder and having a *rounded* shape which *could not* possibly engage to a boat trailer rail. The '898 reference teaches a ladder having another *rounded* hook which could not engage to a boat trailer rail. The '487 reference teaches a ladder having a hook which is at least not round, however it is dimensioned and configured to engage to a building wall and *could not engage* a boat trailer rail and worse, it has a *hinge*: were the ladder cantilevered outwards from a wall it would flop over at the hinge as it is designed to do, whereas the ladder of the present invention cantilevers outwards from the boat trailer rail. Finally the '614 reference has *rounded clamps* or claw shapes designed to engage the round rails of an ATV rack, and so it too *could not* engage a boat trailer rail.

The elements disclosed in references be arranged the same as the elements as claimed in the patent application in order to serve as anticipating references. To quote the Federal Circuit Court of Appeals, the elements must be "**arranged as in the claim**", *Lindermann Maschinenfabrick GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 at 485 (Fed. Cir. 1984), which itself cited to *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

Thus, finding hooks on ladders is not sufficient. In order to be anticipated, the reference must show a hook *arranged as in the claim*, which in this case is carefully defined as a hook "dimensioned and configured to physically engage with such boat trailer rail when clipped thereto."

In the interest of speeding prosecution, the applicant will briefly discuss the "Doctrine of Inherency". The Doctrine of Inherency only applies to cases in which an element of an invention is actually present in the reference and in which it is merely not discussed. In particular, in order

to use the Doctrine of Inherency to fill a gap in a reference's teaching: "the missing descriptive matter is necessarily present in the thing described in the reference" and "evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference" (*Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, Fed. Cir. 1991). In the present case, there is no evidence at all that the missing matter (in this case, the fact that the hook *engages physically with a boat trailer rail*) may be found in any of the references. Quite the contrary, the references teach the hooks to be shapes which could not engage to a boat trailer rail because they are shaped to engage to the sides of wagons, the sides of buildings, and so on.

For all the foregoing reasons, applicant respectfully urges that claim 1 and all claims dependent therefrom are now in condition for immediate allowance, and such action is earnestly requested.

Drawings. Fourth Paragraph of the First Office Action.

The Examiner presently objects to the drawings as not showing limitations of claims 6, 7 and 11. In claim 6, the term "pin" has been removed. In claim 7, one hole has been removed and the term "lock" used instead. In claim 11, a typographical error has been removed and clearer terms ("use position", "folded position") are used. Thus, the applicant very respectfully feels that this grounds for rejection has been mooted, as the objectionable elements are no longer present in claims 6, 7 and 11, and allowance of the application is earnestly requested.

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## Conclusion

For all the foregoing reasons, applicant respectfully urges that the application is now in condition for immediate allowance, and such action is requested. The Examiner is respectfully  
5 urged to contact applicant's counsel, Craig W. Barber, PO Box 16220, Golden, Colorado, 80402-6004, 303-278-9973, fax 303-278-9977, with any questions or comments.

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